APPEAL NO. 010768

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 29, 2001. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on March 4, 1999, and had an impairment rating (IR) of zero percent as assessed by the designated doctor, Dr. N, whose report is entitled to presumptive weight.

The claimant has appealed, asserting that the great weight of the medical evidence contradicts Dr. N's certification of MMI and IR. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable injury to his low back on _____. The chronological history of this case is unclear from the record. The parties stipulated that the required medical examination doctor, Dr. B, found that the claimant reached MMI on March 4, 1999, with a zero percent IR; that the designated doctor, Dr. N, found that the claimant reached MMI on March 4, 1999, with a zero percent IR; and, that the claimant's treating doctor, Dr. I, found that the claimant reached MMI on June 1, 1999, with a seven percent IR. Dr. I awarded five percent of the IR for pain, pursuant to Table 49, Section II(B) of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and two percent impairment for loss of range of motion.

Dr. N determined that the claimant's pain is of undetermined etiology and that the claimant has "subjective complaints out of proportion to objective findings." He further determined that the entire exam was replete with insincere and submaximal effort. The difference of opinion between the designated doctor and the treating doctor was whether to assess an impairment from Table 49 of the AMA Guides. Dr. N stated that the claimant's pain was due to "undetermined etiology" (i.e. not due to the compensable injury).

The hearing officer did not err in giving Dr. N's report presumptive weight, as it is not against the great weight of medical evidence to the contrary. The hearing officer weighed the evidence and determined that the claimant's symptoms are out of proportion to any convincing objective findings of injury. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. This is equally true regarding medical evidence. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers'

Compensation Commission Appeal No. 950456, decided May 9, 1995. There is sufficient medical evidence to support the hearing officer's determination.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge